

olleen Duffy-Smith (CA Bar No. 161163)  
MORGAN DUFFY-SMITH & TIDALGO LLP  
1960 The Alameda, Suite 220  
San Jose, CA 95126  
(408) 244-4570  
cduffysmith@mdstlaw.com

[Additional counsel on  
signature page]

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

ALFRED T. GIULIANO, Chapter 7  
Trustee of the Ritz Estate, on Behalf  
of the Ritz Estate; CPM Electronics Inc.;  
E.S.E. Electronics, Inc; and MFLASH, Inc.  
On Behalf of Themselves and  
All Others Similarly Situated,

Plaintiffs,

v.

SANDISK CORPORATION

Defendant.

**CASE NO. CV 10-02787-SBA**

**NOTICE OF MOTION AND MOTION  
TO STAY DISCOVERY AND OTHER  
CASE DEADLINES PENDING  
RESOLUTION OF PLAINTIFFS'  
MOTION TO CERTIFY CLASS**

**Hearing Date: November 18, 2014  
Time: 1:00 p.m.  
Courtroom: 1, Oakland  
Judge: Hon. Sandra B. Armstrong**

**NOTICE OF MOTION AND MOTION TO STAY DISCOVERY AND OTHER CASE  
DEADLINES PENDING RESOLUTION OF PLAINTIFFS' MOTION TO CERTIFY CLASS**

PLEASE TAKE NOTICE THAT on November 18, 2014, at 1:00 p.m., at the above-entitled  
Court, located at 1301 Clay Street, Oakland, California, in the courtroom of Hon. Sandra Brown  
Armstrong, Plaintiffs Alfred T. Giuliano, Chapter 7 Trustee of the Ritz bankruptcy estate ("Trustee");  
CPM Electronics Inc. ("CPM"); E.S.E. Electronics, Inc. ("E.S.E."); and MFLASH, Inc.  
("MFLASH") (collectively, "Plaintiffs"), will and hereby do move the Court, pursuant to Civil Local  
Rules 7-1 and 7-2, for an order staying discovery and all other case deadlines not related to Plaintiffs'

1 Motion to Certify Class (Dkt. No. 240) (“Plaintiffs’ Class Certification Motion”) pending the  
 2 resolution of Plaintiffs’ Class Certification Motion, or, in the alternative, an order extending all case  
 3 deadlines unrelated to class certification pending resolution of Plaintiffs’ Class Certification Motion,  
 4 for the reasons set forth below.<sup>1</sup>

5 Plaintiffs respectfully request an order staying merits discovery and all other case deadlines  
 6 not related to Plaintiffs’ Class Certification Motion until 60 days after the Court resolves Plaintiffs’  
 7 Class Certification Motion, or, in the alternative, an order extending all case deadlines unrelated to  
 8 class certification until 60 days after the Court resolves Plaintiffs’ Class Certification Motion.  
 9

## 10 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 11 **ISSUE**

12 The issue is whether the Court should stay merits discovery and all other case deadlines not  
 13 related to Plaintiffs’ Class Certification Motion until 60 days after the Court resolves Plaintiffs’ Class  
 14 Certification Motion, or, in the alternative, whether the Court should issue an order extending all case  
 15 deadlines unrelated to class certification until 60 days after the Court resolves Plaintiffs’ Class  
 16 Certification Motion  
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### 18 **BACKGROUND**

19 Plaintiffs filed their Motion to Certify Class and for Appointment of Class Counsel on  
 20 September 2, 2014, as well as a supporting expert report of Dr. Ryan Sullivan. Dkt. No. 240. On  
 21 September 19, 2014, the Court denied SanDisk’s motion to dismiss for lack of subject matter  
 22 jurisdiction, granted Plaintiffs’ motion for leave to file the Fourth Amended Complaint (“4AC”), and  
 23 denied Plaintiffs’ motion to modify the scheduling order to file a modified 4AC. Dkt No. 243.  
 24

25  
 26 <sup>1</sup> Counsel for Plaintiffs has conferred with counsel for SanDisk Corporation (“SanDisk”). Counsel  
 27 for SanDisk informed counsel for Plaintiffs that SanDisk opposes this motion. *See* Edelson Decl., ¶ 5  
 28 (attached hereto as Ex. A).

1 The parties have conducted significant document discovery relating to class certification and  
 2 the merits, but they have focused depositions on topics relating to class certification. *See* Ex. A, ¶ 2.  
 3 During merits discovery, Plaintiffs intend to conduct numerous depositions and may conduct  
 4 additional document discovery relating to the merits, and they also plan to designate merits experts.  
 5 *See id.*, ¶ 3. The parties have until November 14, 2014 – less than six weeks – to complete merits  
 6 discovery and designate merits experts, all while briefing on Plaintiffs’ Class Certification Motion is  
 7 ongoing. *See* Dkt. No. 238. Plaintiffs’ reply in support of their Class Certification Motion is due one  
 8 week after the deadlines for merits discovery and designating merits experts, and the hearing on  
 9 Plaintiffs’ Motion is scheduled to take place more than two weeks later. *See id.*

### 11 ARGUMENT

12 “The court has inherent authority to manage the cases before it.” *IPVX Patent Holdings, Inc.*  
 13 *v. 8X8, Inc.*, 2013 WL 6000590, at \*1 (N.D. Cal. Nov. 12, 2013) (citing *Landis v. N. Am. Co.*, 299  
 14 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in  
 15 every court to control the disposition of the causes on its docket with economy of time and effort for  
 16 itself, for counsel, and for litigants.”)). Applying that authority, courts stay proceedings when doing  
 17 so would promote judicial economy and efficiency, avoid hardship or inequity, and not cause  
 18 prejudice, and courts alter scheduling and other case deadlines for good cause. *See* Fed. R. Civ. P.  
 19 26(c)(1) (“The court may, for good cause, issue an order to protect a party or person from annoyance,  
 20 embarrassment, oppression, or undue burden or expense . . . .”); Fed. R. Civ. P. 16(b)(4) (requiring  
 21 good cause and the Judge’s consent to modify a schedule); *Mediterranean Enters., Inc. v. Ssangyong*  
 22 *Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (“[a] trial court may, with propriety, find it is efficient for  
 23 its own docket and the fairest course for the parties to enter a stay of an action before it, pending  
 24 resolution of independent proceedings which bear upon the case.” (internal quotation marks and  
 25  
 26  
 27  
 28

1 citations omitted)); *Fuller v. Amerigas Propane, Inc.*, 2009 WL 2390358, at \*1 (N.D. Cal. Aug. 3,  
 2 2009). Under the circumstances of this case, each factor weighs in favor of delaying discovery and  
 3 all other case deadlines pending resolution of Plaintiffs' Class Certification Motion.

4 *Judicial Economy.* Staying all case deadlines pending the resolution of Plaintiffs' Class  
 5 Certification Motion would promote judicial economy and efficiency by avoiding wasting valuable  
 6 time and resources of the Court and the parties. Currently, the parties must conclude merits  
 7 discovery – which will require conducting numerous depositions and potentially additional document  
 8 discovery, and also will likely require resolution of discovery disputes, of which there already have  
 9 been many, *see, e.g.*, Dkt. Nos. 181, 222 – and complete merits expert reports one week before  
 10 Plaintiffs' reply in support of their Class Certification Motion is due and more than two weeks before  
 11 the Court conducts its hearing on Plaintiffs' Class Certification Motion. *See* Dkt. No. 238. Not to  
 12 mention, the parties must prepare rebuttal expert reports, complete expert discovery, and file  
 13 dispositive motions shortly after the class certification hearing. *See id.*

14 Depending on the Court's ruling on Plaintiffs' Class Certification Motion, the substantial  
 15 costs and time to complete these tasks may be entirely unnecessary. In light of the Court's denial of  
 16 Plaintiffs' motion to modify the scheduling order to file the modified 4AC, developments in  
 17 discovery, and Plaintiffs' expert's analysis in support of Plaintiffs' Class Certification Motion (Dkt.  
 18 No. 240-1), Plaintiffs' individual damages claims may not justify proceeding with this litigation. *See*  
 19 Ex. A, ¶ 4. Moreover, given the scale of the case and the proof involved, it would be impractical and  
 20 uneconomical to proceed with individual suits on behalf of individual class members, because the  
 21 potential recoveries do not warrant incurring the litigation expense. *See* Dkt. No. 240, at 15 ("Each  
 22 of the hundreds of direct purchasers would be unlikely to pursue their claims against SanDisk  
 23  
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1 individually; as the data reflects, many of these purchasers suffered total overcharges in the hundreds  
2 or thousands of dollars, which would not justify the costs of litigation.”).

3 If the Court denies Plaintiffs’ Class Certification Motion, upcoming merits discovery, ensuing  
4 discovery disputes, expert reports, time spent drafting or ruling on dispositive motions, and all  
5 pretrial work would be an unnecessary and avoidable waste of the Court’s and the parties’ resources.  
6 See *IPVX Patent Holdings*, 2013 WL 6000590, at \*2 (“Staying discovery will avoid the possibility  
7 that the parties will unnecessarily expend time and resources conducting discovery. If the motion to  
8 disqualify Plaintiff’s counsel is granted, the parties will have wasted time and resources propounding  
9 and responding to discovery requests.”); *Meints v. Regis Corp.*, 2010 WL 3058300, at \*3 (S.D. Cal.  
10 Aug. 2, 2010) (holding that it would waste judicial resources to proceed to class discovery where  
11 class action may be barred by a settlement in another case).<sup>2</sup> Similarly, the Court may certify a class  
12 with fewer members than Plaintiffs’ proposed class or it may alter the contours of Plaintiffs’  
13 proposed class, see Dkt. No. 240, at 2-3, potentially affecting the issues and proof Plaintiffs must  
14 establish and thus potentially rendering unnecessary certain merits discovery and other work that may  
15 take place absent a stay or extension. See *Thomas v. Moore USA*, 194 F.R.D. 595, 604 (S.D. Ohio  
16 1999) (deferring resolution of discovery dispute until after ruling on motions for summary judgment  
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22 <sup>2</sup> See also *Karoun Dairies, Inc. v. Karlacti, Inc.*, 2013 WL 4716202, at \*3 (S.D. Cal. Sept. 3, 2013)  
23 (discussing avoidable hardship to the court, the litigants, and the witnesses); *Fuller*, 2009 WL  
24 2390358, at \*1-\*2 (granting motion to stay proceedings pending MDL panel where a stay would  
25 conserve the resources of the Court and the parties and avoid duplicative or unnecessary tasks);  
26 *Hanni v. Am. Airlines, Inc.*, 2009 WL 1505286, at \*7-\*8 (N.D. Cal. May 27, 2009) (granting stay  
27 where dispositive motion pending); *Asis Internet Servs. v. Member Source Media, LLC*, 2008 WL  
28 4164822, at \*2-\*3 (N.D. Cal. Sept. 8, 2008); *Washington v. Brown & Williamson Tobacco Corp.*,  
959 F.2d 1566, 1571 (11th Cir. 1992) (“[C]ourts may allow classwide discovery on the certification  
issue and postpone classwide discovery on the merits.”) (citing *Stewart v. Winter*, 669 F.2d 328, 331  
(5th Cir. 1982)); *Larson v. Burlington N. & Santa Fe Ry. Co.*, 210 F.R.D. 663, 665-66 (D. Minn.  
2002).

1 and class certification because “the scope of the parties’ present discovery dispute will be narrowed  
2 significantly once the issue of class certification is resolved”).

3 *Hardship to Plaintiffs.* Were the case deadlines left as is, Plaintiffs would be forced to  
4 conduct costly merits discovery, including numerous depositions and potential additional motion  
5 practice to resolve discovery disputes, as well as incur significant costs associated with merits expert  
6 reports and defending the depositions of those experts. This time and effort may be wasted if the  
7 Court denies Plaintiffs’ Class Certification Motion. *See* Fed. R. Civ. P. 1 (Federal Rules of Civil  
8 Procedure “should be construed and administered to secure the just, speedy, and inexpensive  
9 determination of every action and proceeding”); *Karoun Dairies*, 2013 WL 4716202, at \*3-\*4  
10 (denying stay would prejudice both parties because it would require them to spend significant time  
11 and money litigating issues that may be invalidated by a pending Ninth Circuit decision).

12 *No Prejudice to Defendant.* Staying or extending the case deadlines would not prejudice  
13 SanDisk. First, there is no risk that evidence would be lost, as most documents responsive to the  
14 parties’ discovery requests have already been produced. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 269  
15 (9th Cir. 1962); *Fuller*, 2009 WL 2390358, at \*1. Indeed, if the Court extends the case deadlines  
16 instead of staying them, SanDisk would remain free to continue pursuing merits discovery and file  
17 dispositive motions. Second, extending the deadlines would not generate any difficult line-drawing  
18 questions regarding whether certain discovery exceeds class certification issues, because class  
19 discovery is substantially complete. *See* Ex. A, ¶ 2. Nor can SanDisk claim that it is somehow  
20 prejudiced by the amount of time it has taken to litigate this case; its conduct during discovery has  
21 forced the parties to seek numerous extensions of deadlines. *See, e.g.*, Dkt. Nos. 171, 181, 183, 194,  
22 222, 225. In any case, the extension will be temporary – only lasting while the Court considers  
23 Plaintiffs’ Class Certification Motion. *See Kassab v. San Diego Police Dep’t*, 2013 WL 4027779, at  
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\*4 (S.D. Cal. Aug. 6, 2013) (“Simply because the litigation has been ongoing for several years does not mean Defendants will be harmed by a ten-month delay. Indeed, the Court views the delay as a minor set-back given the lengthy proceedings. Moreover, as the stay is for a limited period, Defendants are in no danger of being denied their procedural due process rights.”); *Fuller*, 2009 WL 2390358, at \*1 (no meaningful prejudice where, *inter alia*, “any delay caused by this stay will be of very short duration”); *Portillo v. Almager*, 2008 WL 4965945, at \*1-\*2 (S.D. Cal. Nov. 20, 2008) (holding that petitioner would not be damaged by short stay). If the Court stays or extends the case deadlines, SanDisk could save resources and avoid unnecessary costs, and its defense would continue unimpeded if the Court granted Plaintiffs’ Class Certification Motion and the case proceeds on the merits at that time. *See IPVX Patent Holdings*, 2013 WL 6000590, at \*2 (staying discovery where, *inter alia*, Party opposing the stay “has not shown that a limited stay of discovery will impose any unfair prejudice on it”); *CMAX*, 300 F.2d at 269; *Hanni*, 2009 WL 1505286, at \*8 (“[S]taying discovery now will not prejudice Plaintiffs in any way by cutting their discovery window short. Rather, the stay will phase this case in order to prevent the parties from incurring unnecessary costs.”); *Asis Internet Servs.*, 2008 WL 4164822, at \*3.

### CONCLUSION

Plaintiffs respectfully request that the Court grant this motion to stay the deadline for merits discovery and all other case deadlines not related to Plaintiffs’ Class Certification Motion until 60 days after the Court resolves Plaintiffs’ Class Certification Motion, or, in the alternative, to extend all case deadlines unrelated to class certification until 60 days after the Court resolves Plaintiffs’ Class Certification Motion.

1 Dated: October 6, 2014

Respectfully submitted,

2 Steven F. Benz (D.C. Bar No. 428026)  
3 Joseph S. Hall (D.C. Bar No. 475057)  
4 Alexander S. Edelson (D.C. Bar No. 1006041)  
5 KELLOGG, HUBER, HANSEN, TODD,  
6 EVANS & FIGEL, P.L.L.C.  
7 1615 M Street, N.W., Suite 400  
8 Washington, D.C. 20036  
9 Telephone: (202) 326-7900  
10 Facsimile: (202) 326-7999  
11 sbenz@khhte.com  
12 jhall@khhte.com  
13 aedelson@khhte.com

9 Norman E. Siegel  
10 STUEVE SIEGEL HANSON LLP  
11 460 Nichols Road, Suite 200  
12 Kansas City, Missouri 64112  
13 Telephone: 816-714-7100  
14 Facsimile: 816-714-7101

12 Jason S. Hartley (CA Bar No. 192514)  
13 STUEVE SIEGEL HANSON LLP  
14 550 West C Street, Suite 1750  
15 San Diego, California 92101  
16 Telephone: 619-400-5822  
17 Facsimile: 619-400-5832

/s/ R. Stephen Berry  
R. Stephen Berry (D.C. Bar No. 234815)  
BERRY LAW PLLC  
1717 Pennsylvania Avenue, N.W.  
Suite 450  
Washington, D.C. 20006  
Telephone: (202) 296-3020  
Facsimile: (202) 296-3038  
sberry@berrylawpllc.com

Colleen Duffy-Smith (CA Bar No. 161163)  
MORGAN DUFFY-SMITH &  
TIDALGO LLP  
1960 The Alameda, Suite 220  
San Jose, CA 95126  
Telephone: (408) 244-4570  
cduffysmith@mdstlaw.com

16 *Attorneys for Plaintiffs*



**CERTIFICATE OF SERVICE**

I, Alexander S. Edelson, hereby certify that, on October 6, 2014, the foregoing was served via the Court's electronic notification upon counsel for SanDisk.

/s/ Alexander S. Edelson